

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5:04-CR-43-BR  
NO. 5:16-CV-528-BR

MATTHEW SMITH,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

ORDER

This matter is before the court on respondent's motion to lift the stay of this 28 U.S.C. § 2255 proceeding and to dismiss petitioner's § 2255 motion (DE # 36) and petitioner's motion to stay (DE # 38).

On 30 August 2017 and on petitioner's unopposed motion, the court placed this matter in abeyance pending the issuance of the mandate in United States v. Brown, 868 F.3d 297 (4th Cir. 2017). (DE # 35.) The Fourth Circuit issued the mandate in Brown on 6 March 2018, prompting respondent to file the instant motion to lift the stay and to dismiss. Petitioner opposes the motion and requests that the court continue the stay pending the Supreme Court's resolution of Brown, No. 17-9276.

For good cause shown, petitioner's motion is ALLOWED. Within 30 days of the Supreme Court's disposition of Brown, respondent shall file an answer, reply, or other appropriate motion regarding the pending § 2255 motion. Petitioner may file a response within 30 days after respondent's filing. Respondent's motion to the extent it requests to lift the stay is DENIED and to

the extent it requests dismissal is DENIED WITHOUT PREJUDICE.

This 12 June 2018.

  
W. Earl Britt  
Senior U.S. District Judge